UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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HOSTAR MARINE TRANSPORT SYSTEMS, INC.

      Plaintiff,

      v.   Civ. No. 05-10111 DPW

UNITED STATES OF AMERICA,

      Defendant.

_____

UNITED STATES' MOTION TO DISMISS

      Comes now the defendant, the United States of America, by its attorney, Michael J. Sullivan, the United States Attorney for the District of Massachusetts, and moves this court, pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, to dismiss the plaintiff's complaint with prejudice because this court lacks subject matter jurisdiction over the plaintiff's

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claims. This motion is in lieu of an answer to the plaintiff's complaint. The declaration of

Stephen T. Lyons submitted in support of this motion is attached to this motion as required by

Local Rule 7.1(b)(1). The reasons for granting this motion are set forth in a brief being filed

concurrently herewith.

Pursuant to Local Rule 7.1(a)(2), counsel for the United States contacted counsel for the

plaintiff on March 2, 2005, and sought his concurrence in the granting of this motion. Such

concurrence was not granted. Following this conversation, counsel for the United States wrote to

counsel for the plaintiff on the same day asking him to dismiss this action and asked him to

respond by March 9, 2005. No such response has been received as of the date of filing this

motion.

MICHAEL J. SULLIVAN
United States Attorney

BARBARA HEALY SMITH
Assistant United States Attorney

                   /s/stephen.t.lyons
STEPHEN T. LYONS
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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing UNITED STATES' MOTION

TO DISMISS and attached declaration has this 15th day of March, 2005, been electronically filed

with the Clerk of the District Court using its CM/ECF system.

                            /s/ stephen t. lyons
                            STEPHEN T. LYONS
                            Senior Trial Attorney, Tax Division
                            U.S. Department of Justice
                            P.O. Box 55, Ben Franklin Station
                            Washington, D.C. 20044
                            Telephone: (202) 307-6546

CERTIFICATION

Pursuant to 28 U.S.C. §1746, I certify under penalty of perjury as follows:

1.   I am the trial attorney assigned to this case. As such I am in possession of the administrative files provided to me by a representative of the Internal Revenue Service. The following statements are based upon those documents and are true and correct to the best of my knowledge.

2.   Beginning around 1998, the Internal Revenue Service (IRS) began to examine the plaintiff for potential excise tax liability on the sale of some of its trailers. As a result of that examination, the IRS determined that the plaintiff had failed to file the appropriate excise tax returns and pay the amount of tax due on the sale of 14 trailers that were sold during the first and second quarters of 1994, the second through fourth quarters of 1995 and all four quarters of 1996 (period in issue).

3.   On May 8, 2000, the IRS assessed the excise tax, penalty and interest it determined to be due from the plaintiff for the period in issue with respect to the sale of the 14 trailers. The smallest amount of tax assessed with respect to the sale of any of the 14 trailers was $2,590.12.

4.   On January 31, 2001, the IRS applied an overpayment in the amount of $215.20 from the plaintiff's 2000 Form 940, federal unemployment tax return, to its excise tax liability for the second quarter of 1994. On July 31, 2001, the IRS applied an overpayment in the amount of $55.91 from the plaintiff's second quarter 2001 Form 941, employment tax return, to its

excise tax liability for the first quarter of 1994. As of February 23, 2005,

no other payments, other than the $271.11 described above, have been

made by the plaintiff against the excise taxes assessed against it for the

period in issue.

_____   /s/ stephen t. lyons
STEPHEN T. LYONS
Attorney for United States

Executed on: March 15, 2005